

The Dean and Chapter of *Durham*, and *Samuel Shephard*, (their Lessee), Appellants.

The Mayor and Burgesſes of *Newcastle upon Tyne*, Respondents.

THE APPELLANTS CASE.

THE Dean and Chapter being seized of the Mannor of *Wylow*, in the County of *Durham*, on the South-side the River *Tyne*, which extends to the middle of that River, and of the East part of a certain Walt-Ground, called *Jarrow-Slake*, (parcel of that Mannor) consisting of about 150 Acres, with divers Liberties in the said River, they demis'd to the Appellant *Shephard* their said East part of *Jarrow-Slake*, with Power to convert it to his best advantage.

THAT this *Jarrow-Slake* being useſeſ at preſent by the Waters overflowing it at every Tide, which is thereby hindred from flowing up the River; and the Appellant *Shephard* conceiving it a moſt uſeful Place for erecting Salt-Works to make Salt in Quantity, (which is a Commodity the Nation wants, and would be thereby cheapen'd throughout the Kingdom, the Royal-Fiſhery promoted, and the Revenues of the Crown much increas'd) he begun thereupon to incloſe the ſaid Ground with a Ballaſt-Wharf, for the convenience of Salt-Ships caſting their Ballaſt at the ſame place where they take in Salt, according to the Ancient Uſage at *South-Shields*, (within the ſaid Mannor) where they have time out of mind enjoyed ſuch Wharfs without paying the leaſt Acknowledgement to the Respondents, and particularly at a place called *Mildam-Key*, where they have conſtantly taken the Ballaſt of Salt-Ships for above threeſcore Years without interruption, and do to this day enjoy the ſame.

THAT this place having ſeveral Years ago been certified by Commiſſioners of Sewers, upon their Oaths, and View of all the Wharfs on the River *Tyne*, to be the moſt commodious Place for a Ballaſt Key, and its advantages to the Publick having been reported to King *Charles* the Second, by the *Trusty-Maſters* of *London*; the Respondents have endeavour'd theſe many Years, either to get this Ground into their own Hands, or render it uſeleſs to any but themſelves; and fearing that Coal-Ships might by reaſon of its Convenience and Situation ſo near the River's Mouth, unload their Ballaſt at the intended Key, rather than ſail ſo many Miles up a dangerous River to the Town-Keys, (the Appellants having formerly claim'd and enjoy'd the liberty of accommodating Coal-Ships as well as Salt with the Conveniencies of unloading Ballaſt, which was affirm'd to them by ſeveral Orders of the King and Council in the Cafe of *Sir Robert Hoth*, above threeſcore Years ago, though the Dean and Chapter have been ſince interrupted in the Profit of Coal-Ships by the force and violence of the Town of *Newcastle*, who prohibit Coal-Ships by Fines, and other Punishments, to caſt Ballaſt at the Appellants Wharfs without Liſenſe, or paying Duty to the Town) the Respondents thereupon not only demolish'd the ſaid Wharf, but exhibited their Bill in the *Exchequer*, preſcribing to the ſole Erection and Liſencing of all Ballaſt-Wharfs; and alledging that the Appellants were erecting a Ballaſt-Key without their Liſenſe, to the damage of the River, pray'd a perpetual Injunction to reſtrain them. Whereupon the Court directed a Tryal on theſe Iſſues: 1. Whether the Appellants could lawfully erect and uſe a Ballaſt-Key at *Jarrow-Slake* without the Respondents Liſenſe. 2. Whether the erecting ſuch Key would be a damage to the River or Navigation thereof, or Port of *Newcastle*. And upon a Verdict by a Jury of *Bedfordſhire*, an Inland County, Strangers to Navigation, that never had any View or Knowledge of the Place in queſtion; The Court without granting the Appellants any further time to make out their Right at Law to a Jury of the Neighbourhood to the Place in queſtion, upon ſuch Iſſues as they ſhould be advis'd to try their ſaid Matter upon, or make uſe of Evidence never yet heard (and ſome of it diſcover'd ſince the laſt Tryal), made a Decree for a perpetual Injunction to reſtrain the Appellants from ever erecting any Ballaſt-Wharf at *Jarrow-Slake*.

Which Decree the Appellants are advis'd is very unreaſonable.

- I. FOR that neither of the Iſſues try'd (ſuppoſing them proper) have ever been try'd by any Jury, either of the ſame or neighbouring County, before whom the Law gives every Man the privilege of having his Cauſe once try'd at leaſt, as having beſt knowledge of Uſage and Matters of Faſt; and ought the rather to have been granted in the Appellants Cafe, which concerns not only the Inheritance of the Church, and the private Inter'eſt that their Leſſee has purchas'd, for a very valuable Conſideration, but the Coal and Salt-Trades throughout the Kingdom.
- II. FOR that no damage has been erer prov'd to have ariſen to the ſaid River or Port by the Appellants Erection of a Ballaſt-Wharf, wherein they proceeded above ſevenſcore Yards, or by the Old Wharf which was built formerly at the ſame place, and has flood the ſifty Years without the leaſt pretence of Prejudice: The Tryal of which Point, the Appellants conceive would have been a much more proper Iſſue, than to try whether it will be hereafter any damage, which no Jury can well take cognizance of, it being impoſſible for Witneſſes to prove how much or how the Appellants would Build, or with what Conveniencies they might accommodate their intended Key, or how they would uſe it, till the ſame is finiſhed.
- III. FOR that the Appellants by this Decree will not only be reſtrain'd from erecting Ballaſt-Wharfs for Coal-Ships, but Salt-Ships too, though it was fully prov'd that Salt-Ships conſtantly caſt their Ballaſt at the Dean and Chapter's Key at *South-Shields*, without paying any Duty or Acknowledgment to the Town of *Newcastle*; to which, in particular, the Appellants Right could not poſſibly be found, upon ſo general Iſſues as was then tried.

AND the Appellants by this Decree are for ever excluded from making the leaſt uſe of their own Ground (contrary to Common Right) about which they have been at very great Expence, and the Church for ever diſabled to make the leaſt Advantage in granting Leaſes of *Jarrow-Slake*, as they have done for many Years, and incapable either of hindring the Tides overflowing more of their ſaid Ground, or preventing Damages to the Port and Haven, which has been much occaſioned by the Waters overflowing *Jarrow-Slake*, and is like to continue, and ſtill increaſe in divers reſpects, whiſt the ſame lies unincloſed; and this upon one ſingle Tryal by a Jury who lived remote from the place; and though the Respondents may inſiſt upon another Tryal about twenty Years ſince, yet the ſame was upon a different Cafe, and between other Perſons, and theſe Appellants were no Parties thereunto, and it was by a *Buckinghamſhire* Jury, who were wholly unacquainted with the Place.

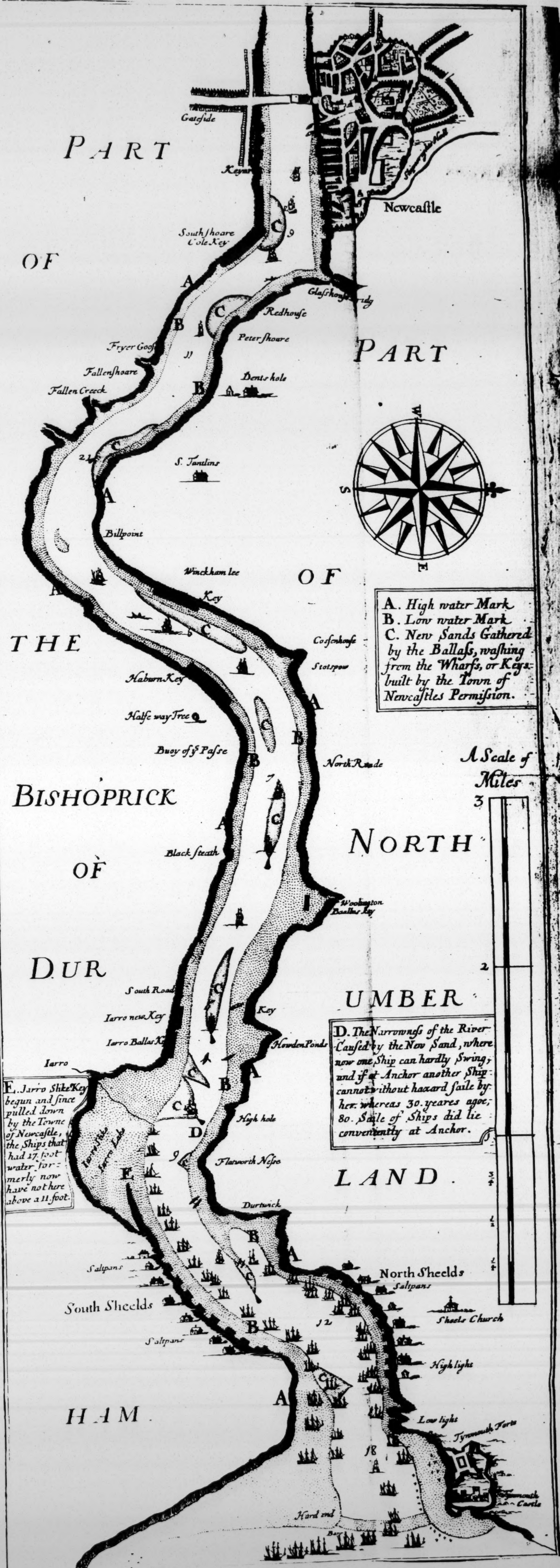
BESIDES, This Verdict, whereby it's found that they cannot lawfully erect or uſe a Ballaſt-Key at *Jarrow-Slake* without Liſenſe, will be an Evidence not only againſt the Appellants Right to the Erection and Uſage of Ballaſt-Wharfs for Salt-Ships at any time hereafter, in any other part of their ſaid Mannor, but alſo againſt the ancient undoubted Right and preſent Uſage at *Mildam-Key*, and other Places already built in the ſaid Mannor, within the Limits or Boundaries mention'd in the Respondents Bill; ſo that Salt-Ships will be either forc'd to pay Duty to the Respondents, or to ſail ſeveral Miles up the River to the Town-Keys, to the great Diſcouragements of the Salt-Trade at *Shields*, and Prejudice of the Churches Inter'eſt, out of which they have hitherto peaceably enjoy'd a great Revenue.

- IV. FOR that neither the Appellants Right, nor ſeveral Material Points relating to it, could, nor ever can be try'd or determin'd upon this Bill and Proceedings in the *Exchequer*.

- V. FOR that this Decree wholly and abſolutely deprives the Appellants from all poſſibility of recovering their Right in this particular, and from ever ſo much as trying their Right again; Which the Appellants humbly hope your Lordſhips will not think agreeable with the Rules of Equity and right Reaſon, eſpecially conſidering that the Corporation of *Newcastle* hath a very great Revenue, and a ſufficient Recompence for their Charges and Expences in preſerving this Port by Impoſitions and Cuſtoms received by them for Goods and Merchandizes Imported and Exported.

FOR which and many other Reaſons, the Appellants are advis'd the ſaid Decree is erroneous and inſufficient, and therefore humbly hope your Lordſhips will ſee good Cauſe to Reverſe it.

N. Wright.
T. Powys.



plain

The Dean and Chapter, and their
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The Mayor and Burgeffes of
Newcastle, Respondents.

The Appellants Cafe.

To be heard the 7th of May.



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